United Nations **AT**

Administrative Tribunal

Distr.
LIMITED

AT/DEC/1009
26 July 2001

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 1009

Case No. 1118: MAKIL

Against: The Secretary-General of the United Nations

THE UNITED NATIONS ADMINISTRATIVE TRIBUNAL,

Composed of: Mr. Kevin Haugh, Vice-President, presiding; Mr. Omer Yousif Bireedo; Mr. Spyridon Flogaitis;

Whereas at the request of Raju Makil, a former staff member of the International Trade Centre (ITC), the President of the Tribunal, with the agreement of the Respondent, extended to 31 December 1999 the time-limit for the filing of an application with the Tribunal;

Whereas, on 23 December 1999, the Applicant filed an Application containing pleas which read as follows:

"**II. Pleas**

Request for Discovery and Witnesses

8. ... [T]he Applicant respectfully requests the [United Nations Administrative Tribunal (UNAT)] to forthwith forward to the Respondent [Requests for Production of Documents, Written Interrogatories and Requests for Admission of Facts] ...

...

11. The Applicant also requests that either a stenographic or audio-tape record of all proceedings before the UNAT, including the examination of witnesses, if any, or consideration of other evidence, be undertaken and made available to the parties hereto.

Redress Sought

14. The Applicant respectfully requests that the UNAT order the Secretary-General to provide further redress for [the] Applicant's treatment by [[the] Respondent, as detailed below:

- That the impugned administrative decision of the ... Executive Director [, ITC,] to place the Applicant on special leave on 2 December 1996 be quashed with full retroactive effect as if said decision was never issued;

- That the Applicant be forthwith restored in all respects to his post and position within ... ITC prior to 2 December 1996 with full retroactive effect, and full restoration of all benefits and emoluments, through his ultimate date of retirement which was 31 May 1997;

- That the ... Executive Director be instructed to issue a countermanding memorandum to his defamatory memorandum of 2 December 1996, stating that the Applicant was reintegrated in full into his position as Deputy Executive Director, ITC, that said memorandum of 2 December 1996 in no way was intended to reflect or comment on the Applicant's performance or person, and further, that such countermanding memorandum contain an express and unconditional apology from the Executive Director to the Applicant for any damage or injury such defamatory memorandum of 2 December 1996 may have caused him, admitting that said 2 December memorandum was indeed defamatory;

- That the Applicant be awarded the sum of three hundred thousand (US$300,000) dollars (an amount equal to approximately two years of the Applicant's final salary) in compensation for the actual and moral injury the Applicant suffered as a result of the impugned decision and subsequent actions incident thereto;

- That the Applicant be reimbursed by ... ITC the sum of twenty five thousand (US$25,000) dollars for his expenses and other costs occasioned by this appeal;

- That the Tribunal award the Applicant a sum it deems appropriate in compensation for the inexplicable delay of the JAB in considering the subject case and issuing its recommendation, as well as for the [Secretary-General]'s failure to respond to the Applicant's original request for administrative review, and for the JAB [Joint Appeals Board]'s failure to allow the Applicant to be

represented before the JAB by counsel of his own choosing on a *pro hac vice* basis;

- That the Tribunal award interest on any sums recommended hereunder at the rate of six (6 %) per cent per annum, from 2 December 1996 through the date of satisfaction of any judgement hereunder;

- Referral of the allegations raised by the Applicant above to an independent and *ad hoc* investigative and disciplinary committee (...) in particular the seeming violation by the ... Executive Director and the UNOG Director of Personnel of General Assembly resolution 51/226, which calls for sanctions against programme managers who mismanage staff and willfully neglect or disregard rules and procedures (...);

- In the event the [Secretary-General] fails to initiate such a disciplinary investigation, and order lifting the functional privileges and immunities of [the Executive Director, ITC,] and [the Chief, Personnel Service, UNOG,] so that the Applicant may seek redress from them directly in any applicable national court of his choosing; and

- Such other relief as the Tribunal deems just, fair and equitable under the foregoing circumstances."

Whereas the Respondent filed his Answer on 28 February 2001;

Whereas the Applicant filed Written Observations on 29 April 2000;

Whereas the facts in the case are as follows:

The Applicant joined the United Nations on 12 August 1968 as an Economic Affairs Officer in ITC under a monthly short-term contract. On 1 January 1969, he was granted a fixed-term appointment for two years as a Research Economist P-2 level, step VII. After a series of promotions, the Applicant was granted a permanent appointment, effective 1 January 1975. On 1 January 1978, the Applicant was promoted to the P-5 level and, on 1 January 1983, to the D-1 level as Director, Division of Personnel Management. He was designated Officer-in-Charge, ITC, on 1 May 1992 and granted a special post allowance to the D-2 level.

Effective 12 June 1994, he was promoted to Deputy Executive Director, ITC, at the D-2 level. On that same date, the newly appointed Executive Director, ITC, assumed his post. On 2 December 1996, the Applicant was placed on special leave with full pay (SLWFP) through 31 May 1997 at which time he retired.

During his service with ITC, the Applicant received four performance evaluations covering the period from August 1968 to April 1981. The Applicant received overall ratings from "very good" to an "exceptionally competent staff member of unusual merit".

Sometime during late summer or early fall, of 1996, the Executive Director met privately with the Applicant and allegedly warned him that he needed to change his attitude towards the internal reform process instituted by the Executive Director. No record exists of this meeting. At a Director's meeting on 30 October 1996, the Executive Director requested that "henceforth, the [Applicant] should chair interdivisional meetings to discuss the final selection of project proposals for submission to individual donors".

During the last week of October 1996, a team from the Office of Internal Oversight Services (OIOS) visited the offices of ITC in Geneva in order to review ITC's programme of work and administrative practices. The OIOS Report issued as a result of that visit was not favourable to the ITC management, emphasizing a lack of delegation of authority, responsibility and accountability.

By letter of 2 December 1996, the Executive Director informed the Applicant as follows:

> "... Regretfully, your lack of commitment and support in implementing the reform ... and our increasingly divergent views and consequent difficulties to work as a management team, have led me to conclude that your involvement in the process would constitute a serious impediment to the success of the overall exercise.
>
> I have therefore decided, in conformity with the authority delegated to me, to place you on special leave with full pay effective immediately, until the date of your retirement, i.e. 31 May 1997."

On the same day, the Executive Director sent a memorandum to all ITC staff informing them of his decision.

Also on 2 December 1996, the Applicant informed the Executive Director that he would appeal the decision and required "full access to all relevant files and papers".

In a letter dated 4 December 1996, the Executive Director advised the Applicant that his access to documentation was limited to his official status file and that he was requested to

vacate his office by noon the next day, 5 December 1996, "as [he would] not be performing official functions during the period of SWLFP and as he had been given the opportunity to assemble [his] personal items since Monday, 2 December".

On 9 December 1996, the Assistant Secretary-General of OHRM sent the Executive Director a fax supporting his actions and urging him to "ensure that the rights and entitlements of [the Applicant would be] fully protected."

On 26 January 1997, the Applicant wrote to the Secretary-General requesting a review of the decision to place him on SLWFP, and on 9 May 1997, the Applicant lodged an appeal with the Geneva Joint Appeals Board (JAB).

The JAB adopted its report on 11 June 1999. Its considerations, conclusions and recommendation read, in part, as follows:

> **"Considerations**
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> 76. The Panel moreover noticed that after warning the Appellant ... the Executive Director gave him an additional responsibility. Indeed, on 30 October 1996, "the Executive Director requested that "henceforth, the [Applicant] should chair interdivisional meetings to discuss the final selection of project proposals for submission to individual donors". In the Panel's view, there is a striking contradiction between these two successive actions of the Executive Director, which does not support the abrupt placement of the Appellant on SLWFP.
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> ...
>
> **Conclusions and Recommendation**
>
> 87. ..., the Panel **concludes** that the decision to place the Appellant on SLWFP [special leave with full pay] was well founded in law and within the limits of the discretion of the Executive Director of ITC.
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> 88. The Panel **concludes**, nevertheless, that the contested decision was tainted by the following shortcomings: (i) the contradictory attitude of the Executive Director after the meeting during which the Appellant was warned of the need to change his attitude and the abruptness of the notification of the SLWFP; (ii) the improper use of the SLWFP; (iii) the way ITC staff was informed about the decision; and (iv) the circumstances under which the Appellant was made to vacate his office.

89. The Panel therefore **concludes** that, while the Appellant incurred no material loss, he did suffer moral injury.

90. In the Panel's view, this report and its acknowledgement of the moral injury suffered by the Appellant constitute the moral compensation called for. In addition, the Panel **recommends** that the Appellant be awarded token damages in the amount of one United States dollar."

On 7 September 1999, the Under-Secretary-General for Management transmitted a copy of the JAB report to the Applicant and informed him as follows:

"...

The Secretary-General ... has taken note of, and agrees with, the Board's conclusion that the decision to place you on SLWFP was well founded in law and within the limits of the discretion of the Executive Director of ITC.

However, the Board also concluded that the contested decision was tainted by a number of shortcomings, as a result of which you incurred no material loss but suffered moral injury. ...

The Secretary-General is not in agreement with most of the shortcomings identified by the Board. With respect to the alleged 'contradictory attitude' of the Executive Director after the meeting during which you were warned of the need to change your attitude, the Secretary-General notes that, contrary to the Board's understanding, you were not given an additional responsibility in October 1996; rather, you were reminded of your responsibilities as the Deputy Executive Director. Accordingly, no 'striking contradiction' exists between the Executive Secretary's reminder to you and his subsequent decision to place you on SLWPF. The Secretary-General also does not agree with the Board that the SLWFP was used improperly as a bridging measure until your retirement and that ITC should have searched for a special assignment for you. Having regard to your rank and imminent retirement, the contested decision was appropriate and was further the result of a cost-benefit analysis to ensure effective implementation of ITC's reform. The Secretary-General takes note of the Board's remark that the notification to the ITC staff of your placement on SLWFP should have contained an explanation for that decision, but he does not agree that the absence of such an explanation is more considerate to, and respectful of, you than a communication to everyone in ITC of the reasons for placing you on SLWFP. However, the Secretary-General acknowledges the Board's concern about the circumstances under which you were made to vacate your office and has decided to accept the Board's recommendation for one US dollar token damages.

..."

On 23 December 1999, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The decision of the Executive Director to place unilaterally the Applicant on SLWFP less than six months prior to the applicant's statutory retirement date, without the Applicant's consent or consultation, without notice or warning to the Applicant, and without stating lawful reasons for such action, was an egregious violation of the Applicant's rights to due process.

2. The decision of the Executive Director to place the Applicant on SLWFP was *ultra vires*, arbitrary, and amounted to a thinly disguised disciplinary measure taken without resort to the procedures of staff rule 110.1 et seq.

3. The decision to place the Applicant on SLWFP and his subsequent actions incident thereto constituted defamation of the Applicant's personal and professional good name and reputation, causing him grave moral injury.

4. The refusal of the JAB to allow the Applicant to be represented by qualified counsel of his own choosing on a *pro hac vice* basis was a violation of the Applicant's rights of due process.

Whereas the Respondent's principal contentions are:

1. The decision to place the Applicant on SLWFP constituted a proper exercise of the Executive Director's discretion and was not vitiated by improper motives or extraneous factors.

2. The refusal of the JAB to allow the Applicant to be represented by counsel of his own choosing was not a violation of his rights.

3. The Applicant is not entitled to his legal costs.

The Tribunal, having deliberated from 2 to 26 July 2001, now pronounces the following judgement:

I. It does not appear to the Tribunal that it is necessary or appropriate that it should order the Respondent to respond to the Applicant's Interrogatories or Request for Discovery or to the Notice requiring the Admission of Facts before it deals within this Application. The Tribunal considers that it has sufficient documentation to enable it to consider and determine this Application and, accordingly, it declines to order the Respondent to make Discovery of Documents or to reply to the Interrogatories or to the Notice to Admit Facts.

II Likewise the Tribunal does not consider it necessary to hear oral evidence to enable it to consider and determine this Application and accordingly it declines to order the taking of oral evidence, if such an Application was ever intended. The Tribunal declines to order that any record to be made or published concerning its deliberations. Such deliberations are irrelevant to the parties. What is relevant is its decision or judgement. Accordingly, the Applicant's request in this regard is denied.

III. The Applicant submits that "the hearing of the present appeal before the Tribunal is *de novo*, the so called findings of the JAB have no legal weight or priority" and submits that "unless the Respondent is able to offer concrete, demonstrative facts to the contrary of those asserted in the application (which, in the Applicant's opinion the Respondent has failed to do in its [Answer]) the Tribunal has little choice but to accept the Applicant's factual assertions as controlling".

The Tribunal rejects this submission and finds that it demonstrates a misunderstanding or misstatement as to the nature and extent of the Tribunal's jurisdiction. The Statute of the Tribunal does not envisage that findings of fact upon which a decision of the Tribunal is reached would ordinarily or usually be made following the Tribunal's own investigations or upon facts found by the Tribunal itself. This is so because matters coming before the Tribunal arrive almost invariably after a preliminary investigation by a JDC or a JAB or like body which carries out investigations and makes findings of facts and then reports thereon. The exception to this general rule arises when the parties have no dispute as to the facts and the matter can be referred to the Tribunal in the first instance on the basis of "Agreed Facts", in accordance with article 7 of

the Statute. Where an application is submitted on the basis of such agreed facts and it transpires that sufficient facts have not been agreed as would enable the Tribunal to embark on a hearing and the making of a decision, the Tribunal will ordinarily refer such a case back to the parties to see if they can agree on sufficient facts or, in default, refer the matter to a JAB for a further investigation or fact finding, as was done for example in Judgement No. 902, *Macnaughton-Jones et al.* (1998).

IV. Accordingly, the Tribunal will ordinarily operate on facts as found by the JDC or JAB or other primary fact finding body, unless the Tribunal expresses reasons for not doing so, such as identifying a failure or insufficiency of evidence to justify the finding of fact allegedly made or where it identifies prejudice or perversity on the part of the said fact finding body or finds that it has been influenced in making that finding of fact by some extraneous or irrelevant matter. Unless such reasons are identified by the Tribunal, then facts as found by the JDC or the JAB will stand for the purposes of the Tribunal's deliberations. The Tribunal stresses that the above principles are applicable to findings of primary facts and have no bearing on the question of interpretation of documents or the drawing of inferences from primary facts. Such inferences may often be described as findings of secondary facts rather than findings of primary facts. This is because the Tribunal is in no way disadvantaged when compared to a preliminary fact finding body, be it a JDC, JAB or other such body in matters of that nature, whereas such body is usually best suited to making findings of primary facts, as it has seen and heard the witnesses. The Tribunal also emphasizes that it of course enjoys the power conferred by the Statute to embark on fact finding in appropriate cases. For instance, it enjoys the power to have oral hearings, albeit it exercises this power infrequently.

V. In the circumstances, it is not correct to say that the findings of fact made by a JAB have no legal weight or priority or that the assertions of fact made by the Applicant in his application must stand unless the Respondent establishes the contrary. This submission demonstrates a serious misunderstanding or misstatement as to the functions and jurisdiction of this Tribunal. For example, there is issue between the Applicant and the Executive Director of the ITC as to whether he had, prior to December 1996, verbally warned the Applicant that he, the

Executive Director, believed that the Applicant was not supporting the reforms planned, or remonstrated with the Applicant concerning his attitude and commitment towards those reforms and told him that his attitude and commitment would have to change. The Executive Director persuaded the JAB in these proceedings that at a meeting in late summer/early autumn 1996 he had so told the Applicant. This the Applicant denied and says that there was no prior warning or expression of dissatisfaction. It was for the JAB to resolve this credibility issue and it did so in favour of the Executive Director. In the proceedings before the Tribunal, the Applicant seeks to persuade the Tribunal that it should alter this finding of fact on the ground that the Executive Director's evidence is not credible and unsupported by either reference to such a meeting in the letter of December 1996 sent to the Applicant, or by a "Note for the file" or by other contemporaneous record. In the opinion of the Tribunal, this was an issue of fact pre-eminently and properly suitable for resolution by the JAB, having considered the evidence. The Tribunal considers that it ought to stand as the Applicant has failed to demonstrate either that the finding was not supported by evidence or that the evidence supporting it was false or was not worthy of belief.

VI. The Tribunal sees no reason why it should, as submitted by the Applicant, proceed on the assumption that the said finding was erroneous and accept the Applicant's assertion that no meeting had taken place, merely because the Applicant has made such an assertion and the Respondent has not been able to conclusively prove the contrary.

VII. The Respondent invokes staff regulation 5.2 and staff rule 105.2 (a) (i) as authority for placing the Applicant on SLWFP for a period of just six months before the date of his retirement. Staff regulation 5.2 speaks of the Secretary-General being empowered to authorise special leave in exceptional circumstances. The Tribunal considers that a true construction of this Regulation means that the Secretary-General may permit or allow special leave to be taken by a staff member who desires to take it, rather than empowering the Secretary-General to force it upon an unwilling staff member, as is the case in these proceedings.

VIII. The Tribunal considers that a very different interpretation arises in the case of the powers of the Secretary-General under staff rule 105.2 (a) (i) which speaks of a staff member being placed on SLWFP in exceptional cases at the initiative of the Secretary-General. The Tribunal is satisfied that there was cogent and credible evidence before the JAB such as allowed it to find that the Executive Director honestly believed that the Applicant was not properly supporting or progressing the implementation of the reforms, and to believe that their increasingly diverging views and consequent difficulties in working as a management team constituted an exceptional case which warranted placing the Applicant on SLWFP for the six months remaining until his retirement.

IX. What was being alleged and decided against the Applicant was that he was resistant to change and did not support a programme of change or reform which the ITC had decided should be implemented. This is not the same as actively engaging in misconduct, which could have led to disciplinary measures being taken against the Applicant, had there been a finding of misconduct. What was being criticised was his attitude and his alleged lack of support for the programme of change, not that he was actively or wilfully disobedient or seeking to sabotage the programme. The Applicant seeks to argue that, on the contrary, the Executive Director had some ulterior motive for his decision (i.e. a desire to make him a scapegoat for criticisms which had been made or which the Executive Director believed would be made, in a Report from OIOS, which was then investigating the ITC) or that the Executive Director malevolently and unreasonably sought to inflict a punishment on the Applicant.

X. The Applicant failed to offer any evidence in support of either theory or hypothesis. The Tribunal, of course, understands and accepts that it is always difficult for anybody to find evidence supporting this type of allegation, as those who conspire to commit unlawful and vengeful acts try not to leave a trail of evidence. Nonetheless, the circumstances of this particular relationship appear to the Tribunal to make this allegation unlikely. The Executive Director appears to have been historically well disposed to the Applicant. When the Executive Director was appointed he requested that the Applicant be appointed as his second-in-command.

He does not appear to have sought to undermine the Applicant. There is dispute as to whether the Executive Director imposed enhanced or extra duties on the Applicant or whether he merely exhorted him to perform whatever were already his duties. Either scenario suggests that the Executive Director was, until some months before December 1996, actively showing support for the Applicant, at least in some areas, rather than undermining his position. The JAB considered that this demonstrated a contradictory attitude on the part of the Executive Director. This is one point of view but, on the other hand, encouragement and increasing staff members' responsibilities or authority are well known ways of seeking to provide a spur to those that are considered to be slacking. In any event, the JAB was entitled to reject the Applicant's said contention and to find that the Executive Director acted in a *bona fide* manner and not with a base or ulterior motive, and the Tribunal sees no reason why this finding should be overturned.

XI. The Applicant complains that he was not afforded due process prior to the making and implementation of the Executive Director's decision to place him on SLWFP and to exclude him from his office. By this he means that he ought to have been afforded details of the allegations made against him, a hearing thereon and an opportunity of making his answer to those allegations and to make his case. The Tribunal accepts that the Applicant would have enjoyed such rights had allegations of misconduct, which might have led to disciplinary sanctions being taken against him, been contemplated. This was not the case. The Applicant occupied a crucial position within ITC and his cooperation and support were considered crucial in the implementation of the reform programme. The Tribunal accepts that, where the Executive Director was genuinely of the opinion that the Applicant's continuing occupation of the post would have stymied or handicapped the implementation of the reform programme, the Executive Director was entitled to consider that it was expedient, and in the interests of ITC, that the Applicant should be immediately placed on special leave and in consequence removed from his duties. Time would not have permitted an investigation or a hearing: It is probable that the Applicant would have reached retirement age before such an investigation could have been concluded. Accordingly, the Tribunal considers that the decision to place him on SLWFP was warranted and appropriate in the circumstances.

XII. In the course of his submissions, the Applicant refers to the Code of Conduct for International Civil Servants and quotes from paragraph 13 thereof. This paragraph deals with the entitlement of a staff member (in particular a junior one) to express his views, and in particular such views as may be opposed to the views of his superior officer(s), and encourages due recognition to the merits of those views. The Tribunal does not appreciate the relevance of those observations to the facts of the present case as the Applicant does not appear to contend that he had a legitimate or heartfelt opposition to the proposed reform programme or that he had just expressed his views. If the submission is designed or intended to suggest that where a staff member has a sincere or heartfelt view that a legitimate or lawful programme of reform is unwise, he is entitled to express his views then, of course, the Tribunal accepts the wisdom and correctness of the proposition. If, on the other hand, it is intended to submit that such an official is entitled to try to stymie or sabotage the implementation of a programme, then the Tribunal need hardly add, this submission is gravely misconceived.

XIII. The Applicant claims that he was denied due process in relation to the proceedings of the JAB in that he was denied the right to be represented in those proceedings by qualified counsel of his own choosing, and that he was restricted to representation from the category of persons identified by staff rule 111.2 (i). The Tribunal is satisfied that such category of persons is sufficiently wide that it would have permitted counsel not suffering from a conflict of interest to have been retained. In particular, the Tribunal rejects the notion that counsel who are, or have been, in the employ of the Organization are so besmirched or compromised that they should be deemed incapable of acting impartially and honestly. The Tribunal considers this submission gratuitously offensive and unwarranted. The Tribunal is satisfied that the category of persons is sufficiently wide that an applicant's right to due process is not denied by the application thereof.

Save as to the amount of compensation to be awarded to the Applicant for the precipitous expulsion from his office, the Tribunal is satisfied that the JAB's findings and recommendations are not irrational, inexplicable or unreasonable. The Tribunal is also satisfied that the Respondent's decisions pursuant to those findings and recommendations, again with the exception for the amount of compensation to be paid for the precipitous expulsion of the Applicant from his office, were reasonable and rational and were ones which he was entitled to

make. It was, in the view of the Tribunal, reasonable for the Executive Director to have abstained from reciting the reasons for putting the Applicant on special leave and for relieving him of his duties, as had he done otherwise the Applicant might then have complained that his reputation ought not have been so besmirched. It was a difficult decision to make. The Tribunal is, however, satisfied that no right of the Applicant was infringed by the manner in which the Executive Director's Notice to the staff was worded. In any event, insofar as the Applicant claims that this gives rise to a cause of action for defamation, the Tribunal is satisfied that it is not within its jurisdiction to hear or to determine such claims. The Tribunal has no jurisdiction in claims of pure tort, meaning a wrongful act or omission which does not also constitute maladministration. Had it such jurisdiction then, of course, issues such as whether such a claim might be covered by privilege and, if so, whether by qualified privilege or absolute privilege would have to be considered and whether privilege was displaced by malice, had malice been proved. Clearly this Tribunal has no jurisdiction to consider or adjudicate upon such issues. Accordingly this claim is rejected.

XIV. With reference to the Applicant's precipitous expulsion from his office, such expulsion may well be an appropriate measure - and frequently is an appropriate measure - where the person suspended has been accused of dishonesty and the suspension is made pending an investigation of the accusation. This is particularly so where the dishonesty alleged is said to arise from the manner in which the suspected staff member has gone about his work. Obviously it would be unwise in the extreme to leave such a person with access to his work documents and leave him in close proximity with his colleagues and, in particular, subordinates, for such a situation would allow ready opportunities to such a suspect to remove or alter possibly incriminating documents or to otherwise alter or destroy potential evidence or to seek to conspire with his colleagues or to improperly influence them or intimidate them. No such activity and no act of misconduct was alleged against the Applicant. It was not being suggested that his removal from the premises could be justified on any such grounds.

XV. The Tribunal considers that in the light of the legitimate decision of the Executive Director not to inform fellow staff as to the reason why the Applicant had been placed on

SLWFP, that to have expelled him from the premises in the manner in which it was done, when combined with the decision not to give a reason was likely to cause people to believe that his honesty was being impugned or that he was being excluded from his office so as to prevent him from altering or destroying evidence. The Tribunal accepts that rumours very hurtful to the Applicant were likely to have circulated and that the act of expelling him from his office in the manner in which it was done added fuel to the flames. The Tribunal considers that nominal damages may be an appropriate measure of compensation when there has been a mere technical breach of a right but where no actual damage has been inflicted. The Tribunal considers that a more appropriate measure of compensation in relation to the Applicant's claim under this heading is necessary.

XVI. In view of the foregoing, the Tribunal:

(a) Orders the Respondent to pay the Applicant US$30,000 in compensation;

(b) Rejects all other claims.

(Signatures)

Kevin HAUGH
Vice-President, presiding

Spyridon FLOGAITIS
Member

Omer Yousif BIREEDO
Member

Geneva, 26 July 2001

Maritza STRUYVENBERG
Executive Secretary